



Legal Update

March 7, 2014

An Act Relative to Unlawful Sexual Surveillance

On March 7, 2014, Governor Patrick is expected to sign “*An Act Relative to Unlawful Sexual Surveillance*.” This legislation was the State Lawmakers rapid response to the Supreme Judicial Court’s March 5, 2014 ruling that G.L. c. 272, § 105(b) which prohibits secretly photographing or videotaping a person “who is nude or partially nude,” does not include “upskirting” - the practice of secretly photographing underneath a woman’s dress or skirt. The opinion, *Commonwealth v. Robertson*, is attached along with House Bill 3934.

Effective Date: This legislation will take effect immediately.

The legislation amends G.L. c. 272, § 105(a) by defining “Sexual or other intimate parts “as human genitals, buttocks, pubic area or female breast below a point immediately above the tip of the areola, whether naked or covered by clothing or undergarments.

G.L. c. 272, § 105(b):

An individual photographing or videotaping another’s body parts, even if the body parts are covered with clothes, shall be punished by imprisonment in the house of correction for not more than 2 ½ years or by a fine of not more than \$5,000, or by both fine and imprisonment.

If the victim is under 18 years old the penalty increases to 2 ½ years in the house of correction or not more than 5 years in state prison or by a fine of not more than \$10,000, or by both fine and imprisonment.

G.L. c. 272, § 105(c):

If the victim is under 18 years old and the photo or video is shared with the public that individual shall be punished by imprisonment in the house of correction for not more than 2 ½ years or in the state prison for not more than 10 years or by a fine of not more than \$10,000, or by both such fine and imprisonment.